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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR. JUSTICE G.PATRI BASAVANA GOUD

WRIT PETITION NUMBER 15416 OF 1995

Between:

Vrashabhadeva, Major
son of late M. D. Adhikari
Mudrady Beedu
Varanga village and PO
Karkala Taluk, DK -Petitioner

(By Sri Sampath Anand Shetty, Advocate)

And:

1. The Land Tribunal
Karkala, represented by
its Chairman,
PO Karkala, DK

2. Smt. Prema, Major,
wife of late Manjunath Rao
Mudrady village & PO
Karkala Taluk, DK

3. The State of Karnataka
represented by its Secretary
Department of Revenue
Vidhana Soudha
Bangalore 560 001 -Respondents

(By Sri B. M. Krishna Bhat, Adv. for R-2;
Smt. M. R. Shanthakumari HCGP for R-1 and R-3)

This writ petition is filed under Articles 226 and 227 of the Constitution seeking to quash the order dated 11-2-1993 at Annexure-A passed by the Land Tribunal in TRL.948/74-75 in so far as it relates to the correction of the order of the Land Tribunal concluded in the year 1976.

This writ petition coming on for hearing this day, the Court made the following:

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O R D E R

Second respondent's husband Manjunatha Rao had filed an application under Section ~~48~~ 48 K(1) of the Karnataka Land Reforms Act, 1961 before the first respondent Land Tribunal, Karkala, seeking confirmation of occupancy rights in respect of certain lands. By the time the Land Tribunal passed the order dated 7-9-1976 at Annexure-B, the applicant Manjunatha Rao was dead, and therefore, the confirmation of occupancy rights was done in favour of the second respondent Prema, the widow of the deceased applicant. The said Prema, on 24-11-1986, made an application as at Annexure-D to the effect that the extent of land mentioned in respect of certain survey numbers in the order of the Land Tribunal dated 7-9-1976 varies with the extent of the land actually in her possession and enjoyment and that therefore, the order dated 7-9-1976 should be reviewed and the extent as requested for in the said application at Annexure-D be rectified. The second respondent gave one more application on 4-2-1993 at Annexure-E to the effect that in respect of lands covered by the said decision of the Land Tribunal dated 7-9-1976, a survey

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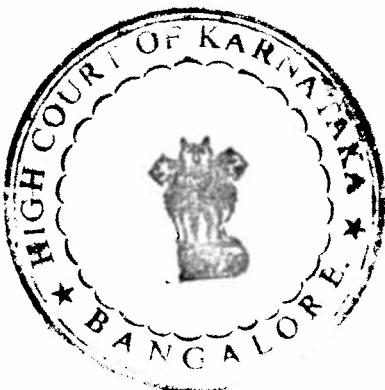
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has been conducted and that as per the said survey, certain rectification needs to be done in the matter of extent of certain survey numbers. She listed therein survey numbers and the extent of each survey number as specified in the original order dated 7-9-1976 and the change required in respect of the extent of each of the *said* survey numbers. By the impugned order, the Tribunal opined that on perusal of records relating to confirmation of occupancy rights leading to the passing of the order dated 7-9-1976 and after comparing it with the survey report, it is found that the land registered in the name of the second respondent as per the order of 7-9-1976 is different from the land that is actually in possession and enjoyment of the second respondent as found in the survey report. The Land Tribunal, by the impugned order, therefore, proceeds to hold that the earlier order dated 7-9-1976 is recalled and that a fresh order of confirmation of occupancy rights is done in respect of survey numbers and to the extent as specified in respect of each of the said survey numbers as listed in the said order at Annexure-A dated 11-2-1993. It is this Annexure-A that is called in question in this writ petition.

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2. First of all, whether such request could have been legally entertained is a question that the Tribunal ought to have considered. Secondly, even if the Tribunal was permitted in law to do so, the Tribunal could not have proceeded to recall the earlier order and to pass a fresh order conferring occupancy rights in respect of lands that are actually in possession and enjoyment of the second respondent as per the survey report, without so much as notice to the land owners, much less an enquiry in that regard. The impugned order at Annexure-A would show that the other side had had no opportunity of being heard at all.

3. Petition is allowed. Impugned order at Annexure-A is quashed. Matter is remitted to the Land Tribunal for fresh consideration of the request of the second respondent, and, it would be open to the petitioner herein to urge the maintainability of such request at all, also, in addition to having his say on the merits of the case. The Land Tribunal shall take up the matter after due notice to both sides. All questions are left open to be urged by both parties before the Tribunal.



Sd/-
JUDGE